UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SUSAN GALLEGOS,

       PLAINTIFF,

v.   CASE NO. 06-12643

COMMISSIONER OF SOCIAL   HONORABLE SEAN F. COX
SECURITY,

       DEFENDANT._____

_____/

OPINION & ORDER
ACCEPTING AND ADOPTING REPORT & RECOMMENDATION

This social security appeal is before the Court for consideration of Plaintiff's objections

to the Report and Recommendation ("R&R") filed by Magistrate Judge Steven Whalen on July

11, 2007, relating to the parties' cross-motions for summary judgment. In the R&R, Magistrate

Judge Whalen recommends that the Commissioner's motion be granted and that the Plaintiff's

motion be denied. For the reasons that follow, the Court overrules the objections filed by

Plaintiff and shall adopt the R&R.

BACKGROUND

Plaintiff Susan G. Gallegos ("Plaintiff") brought this action under 42 U.S.C. §405(g)

seeking review of the denial of her application for Disability Insurance Benefits under the Social

Security Act. Thereafter, both parties filed cross-motions for summary judgment, which were

referred to Magistrate Judge Whalen pursuant to 28 U.S.C. §636(b)(1)(B) & (C). On July 11,

2007, Magistrate Judge Whalen issued his R&R which recommends that Plaintiff's Motion for

Summary Judgment be denied. It further recommends that Defendant's Motion for Summary

Judgment be granted.

Pursuant to FED. R. CIV. P. 72(b), a party objecting to the recommended disposition of a matter by a Magistrate Judge must filed objections to the R&R within ten (10) days after being served with a copy of the R&R. "The district judge to whom the case is assigned shall make a *de novo* determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made." *Id*.

Plaintiff filed timely objections to the R&R on July 19, 2007.

ANALYSIS

In objecting to the R&R, Plaintiff first claims that Magistrate Judge Whalen operated under the erroneous belief that the ALJ need not include an analysis of both severe and non severe impairments when determining RFC. (Pl.'s Objs. at 2-3). In the R&R, however, Magistrate Judge Whalen concluded that "the record shows that the ALJ reviewed both her severe and non-severe impairments" and that the "ALJ performed an extensive individual review of each of the impairments and noted her consideration of all impairments in reaching an RFC." (R&R at 23). The Court therefore finds this objection to be without merit.

Next, Plaintiff asserts that treating source opinion was not given the status required by the regulations and law. Plaintiff asserts that the ALJ should have considered nurse practioner Richards ("Richards") as an acceptable medical source and that the ALJ "could and should have accorded controlling weight to her opinions of limitations of functioning from pain." (Pl.'s Objs. at 5).

Magistrate Judge Whalen agreed that the ALJ erred in concluding that Richards was not an acceptable medical source. (R&R at 26). He further concluded, however, that "regardless of

whether Richard can be considered an acceptable medical source, the ALJ was correct in not according her controlling weight due to the inconsistencies between her opinion and the record." (*Id*.). The R&R then gave specific examples of those inconsistencies. The Court finds no error with Magistrate Judge Whalen's analysis and finds this objection, and all remaining related objections, to be without merit.

CONCLUSION & ORDER

Accordingly, the Court **ACCEPTS** and **ADOPTS** the July 11, 2007 R&R. **IT IS ORDERED** that Plaintiff's Motion for Summary Judgment is **DENIED** and Defendant's Motion for Summary Judgment is **GRANTED. IT IS FURTHER ORDERED** that Plaintiff's Complaint be **DISMISSED WITH PREJUDICE**.

      IT IS SO ORDERED.

               S/Sean F. Cox
               Sean F. Cox
               United States District Judge

Dated: August 6, 2007

I hereby certify that a copy of the foregoing document was served upon counsel of record on August 6, 2007, by electronic and/or ordinary mail.

               S/Jennifer Hernandez
               Case Manager